

**REMARKS**

In the Office Action mailed September 17, 2003, the Examiner *provisionally* rejected Claims 1-33 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application Nos. 09/938,994 and 09/939,263. These applications and the application at issue here were filed on the same date, August 24, 2001, by the Applicant. Please be advised that a patent has been granted based upon Application No. 09/938,994 (see U.S. Patent No. 6,650,102 B2) and a notice of allowance has been issued for Application No. 09/939,263. See attached Notice of Allowance dated July 24, 2003 and a copy of the allowed claims. The claims at issue here are patentably distinct from the claims in 6,650,102 and 09/939,263 as they each use a different method to screen for mechanical properties: the claims at issue here use a fluid to screen for mechanical properties; the claims in 6,650,102 use a voltage applied to piezoelectric elements from an electrode to screen for mechanical properties; and the claims in 09/939,263 use a voltage applied to a wafer having a plurality of capacitors to screen for mechanical properties. See the foregoing independent Claims 1, 17 and 29; independent Claims 1 and 18 in 6,650,102; and independent Claim 16 in 09/939,263. The fact that these inventions are patentably distinct from each other were also accepted by the Patent and Trademark Office during the prosecutions of 6,650,102 and 09/939,263 as the application and claims at issue here were not cited as a basis for rejection and no terminal disclaimer was required for 6,650,102 and/or 09/939,263. See attached Notice of Allowance and 6,650,102. Thus, Applicant respectfully requests that the rejection be withdrawn.

In the Office Action, the Examiner also rejected claims 1-16 under 35 U.S.C. 102(b) as being anticipated by Lynch et al. (U.S. Patent No. 6,050,138). Lynch et al. is directed to bulge testing portions of a single freestanding film (also known as a "membrane structure") in an effort "to create improved and more accurate and consistent membrane structures." See Lynch et al. at col. 11, lines 40-41. Accordingly, the tested portions of the single freestanding film are constructed of the same materials. The Applicant's claims at issue here are distinguishable from Lynch et al. at least because they are directed to bulge testing of "different material samples" on a substrate in order to characterize different materials for combinatorial

research. This important distinction, among other differences, is further emphasized in the foregoing amendments.<sup>1</sup> By the way of the foregoing amendments and the markings to show changes, the Applicant believes the rejection based upon Lynch, et al. is rendered moot, and requests that the rejection be withdrawn.

The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

By amending the application, the Applicant does not concede that the patent coverage available to it would not extend as far as the original claims. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicant has recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicant from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled.

### **CONCLUSIONS**

In view of Applicant's amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicant submits that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 593-9900.

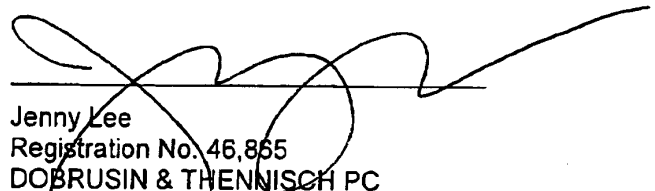
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<sup>1</sup> The foregoing amendments contain no new matter and are supported by the disclosure set forth in the application as originally filed on August 24, 2001.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-0496 for any fee which may be due.

Respectfully submitted,

Dated: December 16, 2003



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